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ABSTRACT

This paper discusses language policy and educational practice in the context of a class action law suit filed on behalf of Asian students in Philadelphia concerning their linguistic and academic needs. It addresses both macro and micro perspectives in its discussion of litigation policy, acquisition policy planning, and Asian Americans in the United States. The analysis incorporates Rubin's (1971) and Fishman's (1979) frameworks as tools for understanding language planning processes in this particular context. In addition, orientations to language planning, the planners and actors involved in the process, and the specific curricular and personnel changes that resulted from this law suit are discussed in an effort to both understand the particular complexities of this situation as well as to evaluate the effectiveness of the relationship between litigation policy and acquisition policy planning in implementing programs for language minority students in American schools. (Author)

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Acquisition policy planning and litigation: Language planning in the context of Y.S. v. School District of Philadelphia

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This paper discusses language policy and educational practice in the context of a class action law suit filed on behalf of Asian students in Philadelphia concerning their linguistic and academic needs. It addresses both macro and micro perspectives in its discussion of litigation policy, acquisition policy planning, and Asian Americans in the United States. The analysis incorporates Rubin's (1971) and Fishman's (1979) frameworks as tools for understanding language planning processes in this particular context. In addition, orientations to language planning, the planners and actors involved in the process, and the specific curricular and personnel changes that resulted from this law suit are discussed in an effort to both understand the particular complexities of this situation as well as to evaluate the effectiveness of the relationship between litigation policy and acquisition policy planning in implementing programs for language minority students in American schools.

Introduction

Many theorists have struggled to create a definition of language planning which could encompass the multiple activities that fall within its domain. Typically, language planning cases concern decisions made about the status or corpus of a language for a particular country, often as a response to a language problem. In this paper, I will discuss a case that involves language planning decisions made at the local level, within the Philadelphia School District. Throughout, I will use Cooper's term, *acquisition planning*, to describe those planning processes that relate to "organized efforts to promote the learning of a language" (1989:157). Specifically, this is a case of "acquisition policy planning" because it deals with "language's formal role in society" (Hornberger, 1992), particularly its role in the schools. Although the focus will be on micro perspectives of language planning in this

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particular school district, it is also important to view acquisition policy planning at the macro level as a context for what is happening in Philadelphia.

In looking at any language planning case, there are multiple layers of planning and a variety of ways to analyze and describe them. In this paper, I will focus on language planning processes and will draw upon several models from the literature (Rubin, 1971; Karam, 1974; Fishman, 1979; Bamgbose, 1989). Most of these models were developed to look at language planning processes at the national rather than the local level. In fact, Bamgbose criticizes Kennedy's emphasis on micro levels of language planning, stating:

> The notion of levels may...be further expanded to include units lower than the government, such as institutions, departments, and classrooms (Kennedy, 1982:268), but it seems that this weakens the notion considerably; lower units can easily be proliferated beyond the point where they cease to be meaningful (Bamgbose, 1989:30).

Although this may sometimes be true, it is my belief that these models can also be quite illuminating at the local level.

This case of acquisition policy planning is directly connected to a 1985 class action suit filed against the Philadelphia School District, *Y.S. v. School District of Philadelphia*, concerning the linguistic needs of Asian students. My own interest in the case stems from my role as a researcher in the School District of Philadelphia, working for the lawyers who originally filed the suit. The purpose of the research was to understand and evaluate the implementation of the proposed acquisition policy.

It will be useful to frame our discussion with an exploration of the role of litigation in determining acquisition policy in the United States at the macro level—what August and Garcia (1988) call *litigation policy*. For although the suit has been settled out of court, the court has had a continued influence on the language planning processes of this case. I will also show the ways in which litigation influences the orientations language planners take in making their decisions. In addition, because this case concerns the specific needs of Asian students in the Philadelphia schools, it will be useful to sketch a broad picture of Asian Americans in the United States, Pennsylvania, and Philadelphia.

The bulk of this inquiry will focus on micro perspectives of this language planning case, and will attempt to answer the question, "Who are the language planners and what are the language planning processes?" I will conclude with a

critique of models of language planning processes in terms of their ability to illuminate this case, and a discussion of how successful litigation policy is in determining the processes and outcomes of acquisition policy planning.

Macro Perspectives

Litigation Policy

Although there has been a long history of court involvement in settling school–related issues, the courts have traditionally "attempted to define and apply basic principles but refrain from prescribing or formulating educational policy" (August & Garcia, 1988:57). In the arena of rights concerning equal opportunity, there has been consistent pressure from plaintiffs to mandate particular types of programs to accomplish desired outcomes. The courts have been forced into a position of monitoring the "success" of programs in accomplishing the goals of equal opportunity long after initial decisions concerning equal opportunity have been made. August and Garcia explain how the courts became involved in educational policy decisions:

> Courts became educational reformers but did so reluctantly and cautiously, attempting to avoid involvement in professional debates regarding pedagogy....Through several decades of adjudication, policy derived from that adjudication has arisen (1988:58).

The foundation of court decisions concerning acquisition policy in the schools has come not from the 1968 Bilingual Education Act, but from the 1964 Civil Rights Act and the 1974 Equal Education Opportunities Act. The Civil Rights Act (Title VI) did not specifically address the language issue, but instead focused on race and national origin as the basis of discrimination. The Equal Education Opportunities Act, however, does explicitly address the language rights of students who are not native speakers of English. It includes "the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs" (August & Garcia, 1988:59) as a criterion for determining the denial of equal educational opportunity in the schools.

In *Lau v. Nichols*, the Supreme Court set policy and precedent for acquisition policy planning for linguistic minority students. In this case, "The Court found that Title VI was violated when there was the *effect* of discrimination, although there was

no *intent*" (Malakoff & Hakuta, 1990:34). Providing the same services, books and facilities for linguistic minority students as for others was simply not enough. The landmark *Lau v. Nichols* (1974) decision was handed down before the Equal Educational Opportunities Act. In fact, *Lau* provided the basis for this Act.

What have come to be known as the *Lau Remedies* have directly influenced many subsequent cases. In 1975, these guidelines were published by the U.S. Department of Health, Education and Welfare to assist school districts in developing programs for linguistic minorities. These guidelines specified procedures for evaluating language skills, developing appropriate educational programs, deciding when students could be mainstreamed, and identifying professional standards for teachers (Lyons, 1990:66). In their discussion of the history of language minority education, Malakoff and Hakuta sum up the influence of *Lau* on other court cases:

> In the aftermath of *Lau*, courts followed the guidelines established by the Supreme Court. They tended to avoid the constitutional issue, to rely on "discriminatory effect" application of Title VI, to choose a remedy case by case, and to take into account the number of children involved (1990:35).

Orientations to Acquisition Policy Planning

Ruiz discusses three main orientations in language planning: language as problem, language as right, and language as resource. He defines an orientation as a "complex of dispositions toward language and its role and toward languages and their role in society" (1984:16). The influence of litigation on acquisition policy planning tends to orient planners toward a view of language as a problem or right, but rarely as a resource.

Ruiz outlines Shirley Hufstedler's (Secretary of Education under Carter) view concerning the language as problem orientation in the Lau Remedies:

> The major declarations of the courts do nothing to encourage anything but transition....The essential purpose of the Lau Regulations is to identify the best services for treating English limited students and "to determine when those services are no longer needed and the students can be taught exclusively in English" (Hufstedler, 1980:66 [cited in Ruiz, 1984:21]).

The influence of this orientation is strongly felt in many cases concerning linguistic minorities.

The language as right orientation can also be found in cases where violations of students' linguistic rights have led to court action. Ruiz points out Macias' distinction between two kinds of language rights: "The right to freedom of discrimination on the basis of language" and "the right to use language(s) in the activities of communal life" (Macias, 1979:88–89 [cited in Ruiz, 1984:22]). Understanding the notion of rights, particularly language rights, is not a simple endeavor. From the time of Hobbes, Rousseau, and Locke, there has been much debate over the distinction between natural rights and legal or conventional rights (Cobarrubias, 1983:73). In the case of litigation policy in the United States, we are most often concerned with those rights that Macias would classify with "freedom of discrimination," and that Locke might call "conventional" or "legal." Ruiz concludes his discussion of language rights appropriately stating that the controversy is "one where the rights of the few are affirmed over those of the many" (1984:24).

Asian Americans in the United States

Suzuki quotes U.S. Census data from 1980 which shows that during the previous decade "the rate of growth of the Asian–Pacific American population was almost double that of the next fastest growing minority group and more than ten times that of the U.S. population as a whole" (1983:1). That *Lau v. Nichols* (1974) and *Y.S. v. School District of Philadelphia* (1985) have been a part of the recent history of the United States is not surprising since the population of Asian Americans is growing faster than any other minority group. One complicating factor concerning Asian Americans and public education has come from the perception that Asians constitute a "model minority" and do not have substantial difficulties in school. Suzuki claims that this view of Asians "is superficial at best and has contributed to widespread misconceptions that have impeded efforts to identify and meet the educational needs" of Asian students (1983:7).

In his article on the immigration patterns of the Indochinese in the United States, Thuy describes two distinct waves of Indochinese migration: those who arrived directly from Vietnam, Laos, and Cambodia in 1975 and 1976, and those who have arrived since 1976 after stays in refugee camps in other parts of Asia (1983:104). This second group of refugees that make up the population most influential in the filing of *Y.S. v. School District of Philadelphia* and most affected by the resulting educational policy. Thuy describes this wave of Indochinese refugees:

> These refugees have come to the U.S. in poor health, with much lower educational and socioeconomic backgrounds, and with fewer marketable skills than their predecessors. They also seem to have less capability in the English language and little or no exposure to Western culture and urban living. A substantial number of them have been semiilliterate [sic] or illiterate (1983:107).

In the April 1991 "Report of the Asian American Task Force of the Pennsylvania Heritage Affairs Commission," the authors discuss the difficulty in obtaining information about the "size and nature" of Asian American communities in Pennsylvania. However, they are able to glean some information from 1990 census data: "While there is no accurate information currently for the size of individual Asian American communities, we do know that from 1980 to 1990, the size of the total Asian American population in Pennsylvania increased 113.5 percent" (1991:2). This report classifies Asian American communities in Pennsylvania in four broad categories: established communities, professionals, entrepreneurial communities, and refugee communities (1991:4).

Within Philadelphia County, the total Asian population as of February, 1991 was 43,522, a 145% increase since 1980 (1991:26). The School District of Philadelphia provides the following estimates of the overall Southeast Asian population in Philadelphia proper as of August 1987 (School District of Philadelphia, 1988:38).

Cambodian	7,000
Hmong	365
Lao	3,500
Overseas Chinese	2,000
Vietnamese	7,000

In a November 1991 document from the Philadelphia School District's Office of Language Minority Programs, the current Asian population in the schools is listed at 8,390 with approximately 3,200 classified as Limited English Proficient (LEP). The total LEP population in the fall was 7,293. The director of Language Minority Programs, Thai Van Nguyen, has projected that the total LEP population will reach 7,861 as of June 1992.

Micro Perspectives

Y.S. v. School District of Philadelphia

It will prove useful to first sketch a picture of the major events leading to the filing of the suit and the subsequent program changes being implemented in the school district for Asian students. More than a year before the suit was actually filed, the Education Law Center was receiving complaints from the parents and teachers of Asian students about violence in the schools, communication between the school and the parents, and about problems with the English for Speakers of Other Languages (ESOL) program, particularly that students were failing in the regular classes they attended during most of the day. At that time, the Education Law Center made informal requests to the school district for information about services offered to Asian students (Rieser, 1990).

After more than a year of hearing complaints and not receiving adequate responses from the school district, the Law Center filed a suit in December 1985 on behalf of a 16-year-old Cambodian student, Y.S., who after three years of not making progress in his ESOL classes, was tested using English-based tests and determined to be retarded. At that point, his parents were asked to sign forms in English (which they did not understand) to have him put in a special education program (Woodall, 1985:48). As Len Rieser, the attorney for the plaintiff, states, "In December, 1985, believing that our informal negotiations with the District were not producing results, and after consulting extensively with Asian community organizations and with teachers serving Asian children, we filed a lawsuit in federal court" (Rieser 1990:2).

In 1986, the Education Law Center filed an Amended Complaint which added two other plaintiffs and outlined specific problems more fully. The Law Center also hired experts from the Center for Applied Linguistics, Newcomer High School, and the Illinois Resource Center to visit schools and review school district documentation. In addition, the school district hired experts to investigate the extent of the problems in the system. The consultants for the Law Center and those for the school district generally agreed about the major problems in the current system and the major linguistic and academic difficulties Asian students were facing in the schools.

In 1987, the Education Law Center published a document called a "Request for Admissions" which included a list of 352 facts they believed they could prove in a trial. Rieser summarizes them saying:

> These facts indicated that the ESOL program was antiquated and inappropriate; that hundreds of students were failing in regular classes because they were receiving insufficient help; that bilingual services were inadequate to meet student needs; that counseling services were inaccessible to many students because of the language barrier; that many language minority students did not have meaningful access to vocational education programs; and that no mechanisms were in place to assist parents in communicating with their child's school (1990:4).

Shortly before court date, an agreement was reached. An "Interim Remedial Agreement" was produced in February of 1988 with the stipulation that the school district would submit a Remedial Plan by the end of the summer. The Remedial Plan was created under the guidance of an Advisory Committee made up of six people: half were chosen by the Law Center and half by the school district. In the end, its members included an ESOL department head (from a school outside of Philadelphia), two ESOL teachers, a Chinese-American parent, a principal, and the Director of Foreign Languages for the school district.

The agreement reached included not only outlines for new instructional programs and counseling services, but also increased bilingual support for parental communication, testing, tutoring and counseling. Although this case is often linked with *Lau v. Nichols* and is the first class-action suit filed concerning Asian students since the *Lau* decision, the remedies agreed upon here are much more specific than the *Lau Remedies*. An article in *Education Week* compared the two cases: "The agreement reached in the Philadelphia case is far more specific than the remedy the Court ordered in Lau. It requires the district to review the placement of all limited-English-proficient Asian students in regular and special education classes and to develop a plan to revise instructional programs where necessary" (Snider, 1988:1).

Beginning in the spring of 1989, what has come to be known as the "New Instructional Model" was implemented at three pilot schools. Several additional schools were added in the 1989-90 academic year. In the fall of 1990, all schools with substantial Asian LEP students in them (33 schools) had begun to implement this program. The New Instructional Model replaces the three-tier ESOL level structure (beginner, intermediate, advanced) with a four-tier structure which divides beginners into two groups: "students with no literacy skills in either English or their native language" (Level 1) and "students with limited English literacy or literacy in their native language but no proficiency in English" (Level 2). In addition, there are

two other levels: intermediate (Level 3) and advanced (Level 4) (School District of Philadelphia, 1988:F1).

Within the New Instructional Model, students at different levels receive differing amounts of ESOL. At all levels and in all grades, students are given a tutorial period in which assistance provided on their content-area work by teachers and bilingual tutors. In the middle and high school models, students in Levels 1, 2, and 3 go to sheltered (and co-taught) content classes with other ESOL students, rather than attending regular content classes with native-speaking peers. (See Appendix A for more information on particular models.) Teachers are encouraged to use the Whole Language Approach; staff development workshops have been offered to assist teachers in adopting this approach.

In March 1991, the Education Law Center filed a "Motion for Finding of Noncompliance and Appointment of Special Monitor" because of persistent implementation difficulties. In their report to the court, the Education Law Center stated:

> We recognize that implementation of the remedy in a case of this sort cannot be expected to proceed without glitches and snags. At this point, however, it is clear that we are confronting systemic, rather than isolated, problems....We have not lightly arrived at the decision to request the Court's intervention. On the contrary, we have consistently avoided making such a request, always choosing instead to proceed through discussion and negotiation (Rieser, 1991:17).

Although the judge did not appoint an official monitor, he did agree that the school district was not complying and issued a "Judicial Finding of Noncompliance." Representatives of the plaintiff and the school district have continued to meet monthly with the magistrate to discuss implementation issues that have remained unresolved for a considerable amount of time.

Decentralized Language Planning

Because of the top-down nature of decision-making in large public school systems, the processes of planning, implementation, and evaluation at first appear to be somewhat centralized. However, further analysis in light of Tollefson's (1984) distinction between centralized and decentralized language planning show that the planning processes at work in this case are highly decentralized. The conflicts between centralized and decentralized decision-making are not specific to this

case, but they reflect the changing nature of the American school system as it begins to shift from a system of centralized control to a system of school-based management. The School District of Philadelphia is in the midst of making this change, as are many districts in the nation. As Fiske states:

> Shared decision-making [is] a new, decentralized approach to the running of schools and school systems that within a few years promises to transform the management of American public education.... The premise of shared decision-making is simple: those closest to the action should have the authority and responsibility to make most of the decisions (1991:30).

The centralized structures are still in place, but schools are beginning to take more responsibility for decisions. This trend is important to understand in this case, as we see the conflict between what school district officials tell schools to do and what schools actually do or are able to do.

Tollefson's notion of decentralized planning concerns three main components: (1) degree of coupling, (2) degree of plan adaptation and, (3) a focus on micro-implementation perspectives. Although Tollefson's discussion focuses on decisions made at the national level, it is illustrative to think of the school district as the "nation" and to see high ranking school district officials as the "national" policy makers.

Degree of coupling concerns the level to which there are many independent organizations or units involved in the decision-making and implementation of the plan. As Tollefson states:

> Decentralized language planning processes are characterized by a system of relatively autonomous units having goals and interests that may significantly differ from those of the the central planners. To the extent that those goals and interests differ, the implemented plan can differ from those of the central planners (1984:178).

The concept of a "loosely coupled system" is appropriate in viewing the process of decision-making, particularly if one includes the influences of the Education Law Center as well as those of school district officials. Although all of the principals of New Instructional Model Schools are told to do the schedules or "rosters" for ESOL students first so that they can be placed in sheltered and co-taught classes, there are many schools that do not do it this way because some other scheduling has taken precedence.

In a school district that struggles to meet the needs of many diverse groups of students, many principals are continually negotiating priorities. Depending on the interests and priorities of particular principals (and to a certain extent, particular teachers), the New Instructional Model can look quite different from school to school. This kind of significant plan adaptation is also a characteristic of decentralized planning processes (Tollefson, 1984:179). One can also see the predominance of micro implementation perspectives as "local concern focuses on the organization and operation of local implementation agencies and institutions" (181). Although there is an interest in implementing the New Instructional Model throughout the system, the implementation definitely takes place school by school. Evidence of this can be seen in how much more successful some schools are than others in implementing the plan.

Language Planning Processes

Many theorists have proposed and discussed models for looking at language planning processes (Rubin, 1971; Karam, 1974; Fishman, 1979; Bamgbose, 1989; Cooper, 1989). In my own attempts to understand the processes involved in this language planning situation, I have experimented with several. Language planning processes are dynamic, not static. For my purposes, looking at Fishman's (1979) model in conjunction with Rubin's (1971) model proved most helpful. By using both of these models, many of the concepts included in Karam's (1974) model are also covered.

Although I have included charts that show the processes and planners involved in each phase of Rubin's and Fishman's models (Appendix B), I would like to propose a model that encompasses some aspects of each for discussion purposes here. For the most part, I have found Fishman's model to be the most extensive and illuminating. However, there are some aspects of Rubin's model that clarify and expand the processes Fishman includes. In essence I would like to take Fishman's model and add Rubin's notion of "fact–finding" and "planning: goals, strategies, outcomes" to it.

As separate models, they look like this:

RUBIN (1971)	FISHMAN (1979)
Fact Finding	Decision-making
goals	
strategies	
outcomes	
Codification	
Elaboration	
Implementation	Implementation
Feedback	Evaluation
Iteration	

Throughout this discussion of processes and models, it is important to remember Rubin's advice:

> It is clear that planning in fact never quite matches th[e] model....But the model is there to help us when we need it....It is probably not a good thing to think of planning as a series of steps but rather to recognize that these steps may come into play at different points in the planning process (1977:285).

Although neither Fishman nor Rubin includes a discussion of planners involved at each step in the process, I have found it useful, particularly in a case that includes so many planners and actors, to show who the planners (and actors) are at each stage.

Fact-finding

This is the first step in Rubin's taxonomy of language planning processes. In her discussion of fact-finding, she includes the needs of the target group, the sociolinguistic setting, the socioeconomic and political context, and the success of "already functioning related models" as important areas language planners should investigate (1977:284). It is easy to see how fact-finding would be an important beginning step in the language planning process. However, it is also important to see how fact-finding occurs throughout the process. In fact, Bamgbose divides fact-finding into three categories: prepolicy, preimplementation and intraimplementation (1989:28).

In the context of *Y.S. v. School District of Philadelphia*, fact-finding has been continuous. Certainly, the initial investigation by consultants on both sides of the suit

constituted prepolicy fact-finding. In addition, the fact-finding done by the school district about numbers and levels of Asian students needing language instruction, testing, counseling services, etc. and the work done by the Advisory Committee in determining how to create a "new instructional model" for the school district would be called preimplementation fact-finding. Finally, the continued fact-finding done by the school district's Office of Accountability and Assessment, and my own observations and interviews in schools for the Education Law Center are certainly evidence of intraimplementation fact-finding.

The on going nature of fact-finding is particularly relevant in this case in the context of continued monitoring by the court. Because of the nature of language policy involving litigation, fact-finding is often duplicated as each side attempts to show the successes and/or problems of the current system. The different goals of fact-finding make the "facts" that are found on each side often quite contradictory. In this particular case, the school district often produces reports which show that implementation has been completed and successful, in spite of indications from teachers and administrators at particular schools that this is not true. One of the elementary school teachers I interviewed early in the fall highlighted the inherent conflicts in doing authentic fact-finding when one of the goals is ending the presence of the court in the schools:

> She talked about the negative feelings surrounding the suit and said that she wished people would stop putting so much energy into making things look good, but rather would focus on what needs to be improved (fieldnotes, 10/4/91).

Fact–finding, in the context of court monitoring, is particularly complex. At times, finding and articulating the facts is not in the best interest of all parties involved.

Planning/Decision-Making

In my discussion of this process, I will combine aspects of Fishman's and Rubin's models. Fishman provides this description of decision-making:

> Decision-making involves negotiations, compromises, tradeoffs, bargaining...Issues have to be clarified, alternatives considered, costs reckoned, consequences weighed, alliances fashioned, fears assuaged, doubts confirmed or disconfirmed before this process runs its course and the final decision is adopted (1979:13).

Although decision-making in the context of this case can be seen as highly decentralized, there is a perception, particularly among teachers in the system, that most of the decision-making done concerning this case has been done in an extremely top-down fashion. In a conversation with an elementary school principal, she expressed this opinion quite strongly:

> She asked for feedback from my earlier visits and wanted to know how I thought the New Instructional Model looked at her school. She articulated a real frustration in the top-down decision making that occurs in the school district (fieldnotes, 3/5/92).

The two major decisions in this acquisition policy planning case came when the Education Law Center decided to file the lawsuit and when the Advisory Committee decided on components of the Remedial Plan. We will see later in our discussion of iteration how decisions are made at many points in the process, not just before implementation.

Rubin's distinctions between goals, strategies, and outcomes within the planning phase further illuminate Fishman's decision-making category and provide a view into the complexity of this portion of the process. Because there are so many influential actors in this case, goals are multi-layered. Rubin stresses the difficulty in isolating goals: "The setting of goals seems to take place at several levels....Goals are often multiple, hidden, and not well ordered" (1977:284). It would be impossible to determine all of the goals, but even the few listed on the chart show how varied they can be: "end law suit," "provide role models for Asian students." Strategies are often quite connected to goals and are extremely difficult to determine because strategies encapsulate both desired outcomes and the practical constraints of "available materials and human resources" (1977:284). Rubin suggests that outcomes should be outlined in advance as a means of evaluating strategies. However, she contends that this part of the planning (decision-making) process is often omitted, making evaluation difficult.

There are multiple examples of the conflicting nature of stated goals, strategies and outcomes in this case. One goal of the Remedial Plan was to hire bilingual Asian tutors to help students with content material. The strategies outlined were to post these positions at local high schools, universities, and Asian community agencies to attract students who would want part-time jobs. The hope was that the outcomes would include increased academic success of Asian LEP students. However, in determining the success of the program, one sees how the

goal of (1) assisting students with course work versus (2) providing native language instruction are viewed with varying importance by different planners and actors. These multiple goals, which are not necessarily stated initially, complicate the evaluation of strategies and outcomes.

Codification and Elaboration

In Fishman's model, codification and elaboration are two steps in the process of planning before implementation; these two stages are connected. Codification is a "succinct statement of purposes, procedures and resources" (Fishman, 1979:13) and elaboration "goes beyond the letter of codification...in order to recapture intents expressed in the decision-making stage" (1979:14). In the context of *Y.S. v. School District of Philadelphia,* there is a clear example of both of these processes. The "Interim Remedial Agreement" is an example of codification, and the "Remedial Plan" proposed several months later is an example of elaboration.

Implementation

Implementation is the stage in the language planning process when theory is put into practice. After much debate, fact-finding, decision-making, codification, and elaboration, the proposed plan is implemented. In this particular case, there have been several stages of implementation, as the program was gradually implemented at more and more schools. As the 1991-92 school year comes to a close, there are several schools that have been unable to implement the plan fully. At one school, there are no co-taught classes because of scheduling problems and a shortage of teachers. At another, advanced students cannot be scheduled for ESOL because of space constraints. At one high school, a bilingual tutor was finally hired in March after nearly a full year of teachers juggling the tutorial period. As the March 1991 "Judicial Finding of Noncompliance" indicates, implementation has not been a smooth process.

Evaluation

The evaluation process is not as straightforward as it might initially seem. With conflicting interests, those doing the evaluating are apt to focus on, see, and find very different things. Fishman provides a very accurate description of this process:

> Evaluation is very far from being a purely objective and dispassionate affair and contending forces seek to tendentiously influence when it should be done, by whom it should be done, how it should be done and, by means of all the foregoing, what it should find (1979:17).

My own involvement with *Y.S. v. School District of Philadelphia* came directly from the distrust on the part of the plaintiff about what the school district evaluations were showing. I was hired to investigate how the New Instructional Model was functioning. It was hoped that because I did not have an interest in making things look better than they really were, the Education Law Center would know more about where there were difficulties in implementation.

Because of the relationship between acquisition policy planning and litigation in this case, one aspect of evaluation has to do with compliance. Each school fills out compliance "check lists" stating how many tutors are working at the school, how many sheltered classes are being taught, etc. It has become clear that a focus on compliance often overshadows a concern for whether or not particular aspects of the New Instructional Model are effective. Initially, the focus of those evaluating on both sides of the case was on compliance issues. More recently, there has been more of an emphasis on determining effectiveness. It is important to note that evaluation is seen as a key component of implementation for all involved. In fact, the school district includes an appendix in the Remedial Plan called "Remedial Plan Evaluation." It states:

> The Remedial Plan Evaluation will have two distinct phases. The First Year evaluation phase will focus on the implementation of the Plan....The second phase, Second Year and Beyond, will focus on the effects of the Plan on students and teachers. Student achievement, client satisfaction, and records of service will receive primary emphasis (School District of Philadelphia, 1988:K1).

In my own observations and interviews in 11 New Instructional Model schools, I have seen many examples of how an emphasis on compliance overshadows real evaluation. One example comes from the situation surrounding bilingual tutors. Early in the fall, at meetings among Education Law Center representatives, school district representatives and the magistrate, school district representatives discussed the shortage of bilingual tutors; many schools had been unable to find and hire any tutors.

Understanding tutor recruitment became one of the first issues I investigated in my visits to schools. I quickly found that the problem was not finding tutors, but paying tutors. After being hired, most tutors were not officially put on payroll for two to three months. If principals followed the rules exactly, this meant that a tutor hired in September could not begin working until December. As a result, many potential tutors decided to find other jobs. What had originally looked like a problem in finding tutors quickly became a problem in "processing" tutors to begin work. Only after the compliance issue of finding tutors was investigated, could I actually begin to evaluate whether or not tutors were effectively doing their job.

Iteration

Iteration, or "a return to...earlier decision-making" (Fishman, 1979:18) is a very important aspect of language planning. Decisions are still being made concerning how to best meet the linguistic needs of the Asian refugee population in Philadelphia, even after nearly two years of implementing the New Instructional Model. In fact, in an April 1992 document, the Education Law Center submitted recommendations for the next academic year which would require additional decision-making. One example concerns changes recommended in the elementary school model:

> Allow a few elementary schools to choose to participate in experimenting with...changes to the elementary model. Group students by ESOL level in ungraded clusters, allowing for a more self-contained approach. Grades 1-4 would be grouped together by level, as would grades 5-8. As students became more fluent in English and were performing at grade level, they could be moved into age-appropriate classes. This change would actually mirror some of the positive effects of sheltered/co-taught classes within the middle school model (Skilton, 1992:7).

Another example is a recommendation to reduce or potentially eliminate bilingual tutors at the elementary level and to increase tutors at the high school level where they appear to be most effective:

> Offer each elementary school the option to decide whether bilingual tutors are needed, and if so, how many. Insure the placement of other bilingual staff (counseling assistants, home/school coordinators, etc.) in elementary schools. Use resources not needed at the elementary level to further enhance bilingual instructional support at the high school level (Skilton, 1992:3).

These two examples are interesting because they also further decentralize the language planning process; they would allow particular schools to assess their interests and needs and to determine whether or not to modify the model at their schools. If the school district agreed to these two recommendations, it would also be a move away from the top-down processes that have been characteristic of decision-making of this system. At this point, decisions about how instructional models could change will ultimately come through negotiation among the school district, the Education Law Center, the Advisory Committee, and the magistrate.

Language Planners and Actors

Clearly, there are multiple planners and actors involved in the acquisition policy planning which has resulted from *Y.S. v. School District of Philadelphia*. As I attempted to see how Rubin's and Fishman's models could illuminate the processes of this particular case, I found it most useful to isolate the major planners and actors at each stage in the process. I see planners as those who have the power to make or strongly influence decisions, and actors as those are less directly involved in the decision-making process. Outlining one planning body overall seemed to cloud the fact that particular planners and actors played perhaps a prominent role in "decision-making" and a much less prominent role in "iteration." It is clear that the major planners include lawyers on both sides, school district officials, the Advisory Committee, outside consultants, and the magistrate. It is also possible to see teachers, parents, community groups, and even Y.S. himself as major actors in the planning process.

Language Planning at the Micro Level

Viewing this language planning case in the context of Fishman's and Rubin's models has illuminated many aspects of language planning at the local level. Seeing the "governing body" as the school district and not a national government worked well. As Bamgbose contends, there may be situations in which this weakens an understanding of the process. However, I believe that using the models at the micro level clarifies the processes involved in language planning cases that have already begun and could also serve to aid acquisition policy planners during the beginning of the planning process.

Pros & Cons Of The Litigation—Acquisition Policy Planning Connection

Throughout my own involvement with this case, I have struggled to understand the positive and negative influence of litigation on language planning processes. It is clear that the connection is not always a positive one. As Ruiz states:

> Terms like "compliance," "enforcement," "entitlement," "requirements," and "protection" create an automatic resistance to whatever one is talking about. Their use creates confrontation. Confrontation is what the legal process is all about (1984:24).

There is certainly an air of confrontation on opposing sides of this lawsuit. However, both sides agree that if the case had actually gone to trial, there would have been an even more confrontational atmosphere to the acquisition policy planning that has taken place.

Bob Lear, the lawyer for the school district, outlined some of the negative influences of the law on this kind of policy making:

> Planning is often a crisis reaction, not proactive planning. It would be better if done from the bottom-up, but it needs to be imposed in a crisis situation....Litigation forces you to make a plan and make it quick (personal communication, 4/1/92).

Len Rieser of the Education Law Center also commented on some of the negative aspects of litigation in the context of a large and bureaucratic school system. The relationship between the process of litigation and a system whose structure does not allow much flexibility makes substantial iteration difficult. As he states:

> It makes it hard to undo decisions. Once something is resolved, it is resolved. The School District is no longer responsive to needs; it is responsive to the court. It seems that everything militates against flexible, informed decision-making....It is amazing how broad the web is to do an essentially simple thing. It seems like a huge mountain is attempting to deliver a pea (personal communication, 9/24/92).

Many administrators and teachers are glad to see that Asian students are being served but point to the many needs of other groups of students. Some principals resent being mandated to do scheduling in particular ways because they have many constituencies to respond to; in this particular case, they are not free to

make other projects a priority without repercussions. One principal outlined the positive and negative aspects of the current situation:

> This principal believes that the New Instructional Model has been a huge success and not difficult to implement. He only wishes that other students could get the same kind of attention in the system (fieldnotes, 12/6/91).

One teacher expressed a strong sentiment that the decisions being made in the school district concerning Asian students were highly discriminatory:

> She has some real complaints about the lawsuit and how the school district is making decisions....She thinks it is wonderful that the district sees the needs of Asian children but that the current program discriminates against Latino children. She thinks that it is a disgrace that tax dollars are funding this program (fieldnotes, 12/4/91).

Of course, there are some benefits as well. Both Len Rieser and Janet Scotland of the Education Law Center strongly believe that the lawsuit allowed for some extremely positive shifts and changes in personnel. They believe that the suit allowed good people to be in positions to influence planning decisions in the school district. They "didn't want [the] court to make substantive decisions" and wanted "language planning by people who know something about language" (personal communication, 3/9/92). Bob Lear also had something to say about potential benefits from the role of litigation in this situation: "Litigation speeded up the process and made a real focus on Southeast Asians" (personal communication, 4/1/92).

Overall, teachers seem to feel good about the changes brought on by the suit. Many were in a position of watching students fail without the power to substantially change the situation. One teacher clearly stated that the law suit had provided an opportunity to provide better services for students learning English:

> When I asked about the New Instructional Model, she said she felt that the law suit had provided the opportunity for much needed positive change for LEP students. She added that she felt that she was not the only teacher who felt this way (fieldnotes, 10/28/91).

I did encounter many teachers who felt similarly about this.

The connection between litigation and parental/community involvement is interesting because it is difficult to place in a completely positive or negative light. Although there were three sets of parents involved in the original filing of the suit, all

three families dropped out of the case before the "Remedial Plan" was created. It is important to see their withdrawal from the suit in a cultural context:

> [Asian] parents are both concerned and involved with their children's education. However, because of the respect they have traditionally accorded to educators,...[they] are often reluctant to intervene in the education of their children, even when they may be dissatisfied (Suzuki, 1983:10).

Viewing the withdrawal of parents from this perspective, one might conclude that much needed changes occurred as a result of the litigation which would not have happened if parents were pressuring the school outside of the legal system. On the other hand, one could question whether or not the litigation was what the parents wanted, and question whether the fact that the case continued without them is in conflict with their interests.

In my opinion, the first explanation is a more accurate understanding of the parents' point of view. Many parents seem pleased with the changes, particularly with the additional staff at the school who speak Asian languages. In addition, when the parents withdrew from the case, many Asian teachers, other Asian parents, and Asian community groups (i.e., the Southeast Asian Mutual Assistance Associations Coalition (SEAMAAC) and Asian Americans United) were consulted throughout the process. Overall, it seems that Asian communities are pleased with what has come out of the litigation, although the process of litigating against schools may not be compatible with traditional relationships to schools within Asian communities.

To me, one of the biggest drawbacks of the connection between litigation and acquisition policy planning concerns the orientations to language planning that it promotes. It seems to encompass the "language as problem" and "language as right" orientations, but works against the "language as resource" orientation. Although there is a short paragraph in the "Remedial Plan" which offers the possibility of native language classes being offered at schools with a substantial population from one language group, even this statement calls for native language instruction solely as an aid in English acquisition:

> The literature on second language acquisition indicates that literacy in the student's first language significantly affects the ease and rapidity with which a student will acquire...a second language. Schools with at least 25 students of the same language group at a single site will offer first language literacy programs as part of their extra-curricular program offerings if the appropriate number of students exists and interest in such study is evident (School District of Philadelphia, 1988:23).

Len Rieser confirmed (personal communication, 4/1/92) that no such class has ever been offered. Although their are individuals I have encountered in the School District of Philadelphia who embrace a resource orientation, the overriding emphasis is on the acquisition of functional English. One administrator articulated this sentiment as he explained:

> My personal feeling and that of many administrators with whom I work is that a second language and cultural diversity are resources which enrich the system. However, there is a practical emphasis on functional English acquisition and an attitude held by many people in the community that "Why do we want bilingual Asians? Their language is not being used or learned by others in the United States" (personal communication, 10/6/92)

If parents or community groups lobbied for a more resource-oriented program, their influence might push the typical orientations within litigation policy away from "right" and "problem" orientations. (The Latino community has been able to do this in some cases because of collective political power and a desire for language maintenance.) It seems that many Asian parents and community groups do not view the public school system as the place for native-language instruction. Certainly there is a long history in the United States of after school programs for Chinese immigrants (Chan & Tsang, 1983:44) and more recently Korean immigrants (Byun, 1990) outside of the public schools.

In spite of drawbacks in terms of "orientation," it is clear that Asian students are being better served today than they were in 1985 when the suit was filed. Because they are a relatively small (although growing) population, their interests and needs would not have been addressed in specific ways if there had not been litigation. No doubt, it would have taken many more years to devote resources to hiring bilingual Asian tutors, teachers, and staff, and the district would have

remained much less knowledgeable about the Asian communities which it serves. It is for this reason that I agree with August and Garcia's concluding statement:

> [U.S. courts] have obligated both local and state educational agencies to meet the needs of language minority students. Moreover, because the courts are not constrained by numbers of affected constituents, they have provided a forum in which minority status is not disadvantageous and as such have protected the rights of language minority students. However, it has been a forum which is highly ritualized, extremely time and resource consuming, and always reluctant (1989:71).

For now, the connection between litigation and acquisition policy planning is a necessary and valuable, although not perfect, marriage.

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Appendix A

Excerpts from "Proposed Remedial Agreement" (School District of Philadelphia, 1988)

Elementary School Instructional Model

The proposed elementary school instructional model incorporates four levels of ESOL. The amount of daily instruction in ESOL is as follows:

ESOL level 1 - 135 minutes daily or 3 periods daily
ESOL level 2 - 135 minutes daily or 3 periods daily
ESOL level 3 - 90 minutes daily or 2 periods daily
ESOL level 4 - 45 minutes daily or 1 period daily

Level 1 ESOL (students with no literacy skills in their native language and English)

135 minutes of ESOL instruction daily: 90 minutes will be ESOL instruction (Listening, Speaking, Reading and Writing in English) and 45 minutes of bilingual instructional support.

Level 1 ESOL students should be monitored carefully so that they can be moved to ESOL level 2 or referred for special services if they qualify.

Level 2 ESOL (students with limited English literacy or literacy in their native language but no proficiency in English)

135 minutes of ESOL instruction daily: 90 minutes of English literacy (Listening, Speaking, Reading, and Writing) and 45 minutes of bilingual instructional support.

Level 3 ESOL (students who have developed some English literacy and proficiency)

90 minutes of ESOL instruction daily (Reading, Writing, Speaking and Listening), 60 minutes of English literacy (Reading, Writing, Speaking and Listening) and 30 minutes of bilingual instructional support.

Level 4 ESOL (students with fairly well developed English literacy and sustained proficiency in English)

45 minutes of ESOL instruction daily (Reading and Writing)

Middle School Instructional Model

The middle school model is based on an eight (8) period instructional day for the student. The student's ESOL level generally determines the instructional program the student will follow.

Level 1 ESOL

* Three periods of ESOL (basic literacy: Reading, Writing, Speaking, Listening)
* One period American Culture Orientation (taught by ESOL teacher)
* One period Orientation to Mathematics (co-taught by mathematics or elementary classroom teacher and ESOL teacher)
* One period of bilingual instructional support (mandatory tutorial)
* One period lunch
* Five periods distributed throughout the week and covering Physical and Health Education, the Arts, Home Economics and Industrial Arts.

Level 2 ESOL

* Two periods of ESOL (Reading, Writing, Speaking, Listening)
* One period of Science/ESOL (taught by ESOL teacher)
* One period of Social Studies/ESOL (taught by ESOL teacher)
* One period of Mathematics (may be sheltered or regular)
* One period bilingual instructional support (mandatory tutorial)
* One period lunch
* Five periods distributed throughout the week and covering Physical and Health Education, Home Economics and Industrial Arts, Music, Art and Computer Science.

Level 3 ESOL

* Two periods of ESOL (Reading, Writing, Speaking, Listening)
* One period of sheltered class Science
* One period of sheltered class Social Studies
* One period of sheltered class Mathematics
* One period of bilingual instructional support (mandatory tutorial)
* One period of lunch
* Five periods distributed throughout the week and covering Physical and Health Education, Home Economics and Industrial Arts, Art, Music and any electives offered at the school.

Level 4 ESOL

* One period of ESOL
* One period of Mathematics
* One period of Science
* One period of Social Studies
* One period of lunch

- One period of Electives
- Five periods distributed throughout the week and covering Physical and Health Education, Art, Music, Home Economics and Industrial Arts, and any electives offered at the school
- One period Developmental Reading

At the level 4 ESOL, students may be in sheltered content area classes or mainstreamed classes depending upon the students performance.

Senior High School Instructional Model

The senior high school model is based on a seven (7) period instructional day for the student. The student's ESOL level generally determines the instructional program the student will follow.

Level 1 ESOL

* Two periods of ESOL
* One period of bilingual instructional support (mandatory tutorial)
* One period Orientation to Mathematics (co-taught by a certified mathematics teacher and an ESOL teacher)
* One period American Culture Orientation (taught by the ESOL teacher)
* One period lunch
* One period Physical Education (half year)
* One period Art, Music or Humanities (half year)

Level 2 ESOL

* One period ESOL
* One period of bilingual instructional support (mandatory tutorial)
* One period ESOL/Physical Science (co-taught by certified science teacher and an ESOL teacher)
* One period ESOL/Social Studies: World History (co-taught by a certified social studies teacher and an ESOL teacher)
* One period of Mathematics: General Mathematics or Algebra
* One period Physical Education (half year)
* One period Humanities (half year)
* One period lunch

Level 3 ESOL

* One period of ESOL
* One period of bilingual instructional support (mandatory tutorial)
* One period of sheltered class Biology
* One period of sheltered class American History
* One period General Mathematics 2, Algebra or Geometry
* One period Physical Education (half year)
* One period of sheltered class Health Education (half year)
* One period lunch

Level 4 ESOL

* One period of ESOL
* One period Geometry, Algebra 2, Mathematics in Application or any other appropriate Mathematics
* One period Computer Science
* One period Chemistry, Science 3 (Science Applications)

- One period Social Science
- One period Physical Education (half year)
- One period Health Education (half year)
- One period lunch

Extra-curricular tutorial support shall be made available for such students requiring or desiring assistance.

Appendix B

FISHMAN (1979)

PROCESSES	Y.S. v. SCHOOL DISTRICT OF PHILA.	PLANNERS (ACTORS)
DECISION-MAKING	DEC 1985, lawsuit filed	(Education Law Center & Plaintiff)
	Several solutions debated (1987/88)	Advisory Committee
CODIFICATION	FEB 1988- Interim Remedial Agreement	Office of Curriculum and Instruction
ELABORATION	DEC 1988- Remedial Plan/New Instructional Models	School District Advisory Committee (3 members plaintiff, 3 members school district)
IMPLEMENTATION	SPRING 1989, 3 pilot schools	Office of Language Minority Programs (ESOL Supervisors), Principals, Teachers
	1989/90, several additional schools	
	1990/91, all 33 schools with many Asians	
EVALUATION	Ongoing	School District, Law Center, Advisory Committee
	MARCH 1991- Judicial Finding of Noncompliance	Law Center (Judge)
ITERATION	Ongoing	Magistrate, Law Center, School District
	APRIL 1992- Recommendations for 1992/93	Law Center

RUBIN (1971)

PROCESSES	Y.S. v. SCHOOL DISTRICT OF PHILA.	PLANNERS (ACTORS)
FACT-FINDING	1984/85- Complaints	(Parents/Teachers) Law Center
	AUG 1987- 352 facts published about problems in district--100's of students failing, bilingual services inadequate, etc.	Experts-CAL, Newcomer HS, Illinois Resource Center; Community Groups, Academics, School District Curriculum People, Teachers, Assoc. Superintendent
	1991/92, continued fact-finding during implementation	Law Center, School District
PLANNING (goals, strategies, outcomes)	Goals--provide equal opportunity	School District, Law Center
	End law suit	School District
	Provide role models for Asian kids/sense of pride about being Asian	Advisory Committee (Law Center, some teachers)
	Strategies--write letters, file suit	(Law Center)
	put resources aside, hire bilingual staff, form Asian Task Force, etc.	School District
	Outcomes--school success for Asians	School District
IMPLEMENTATION	SPRING 1989, 3 pilot schools	Office of Language Minority Programs (ESOL Supervisors), Principals, Teachers
	1989/90, several additional schools	
	1990/91, all 33 schools with many Asians	

FEEDBACK (Evaluation throughout)	Ongoing	Magistrate, Law Center, School District, Advisory Committee
	MARCH 1991- Judicial finding of Noncompliance	Law Center (Judge)
	APRIL 1992- Recommendations for 1992/93	Law Center